

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

<hr/>	:	04 Civ. 0189 (SCR)(GAY)
Timothy Hinckley and June Hinckley,	:	
Plaintiff,	:	
	:	
v.	:	<b><u>ORDER ADOPTING</u></b>
	:	<b><u>REPORT AND</u></b>
Westchester Rubbish, Inc. and Town of Lewisboro	:	<b><u>RECOMMENDATION</u></b>
Defendants.	:	
<hr/>	:	

**STEPHEN C. ROBINSON, District Judge:**

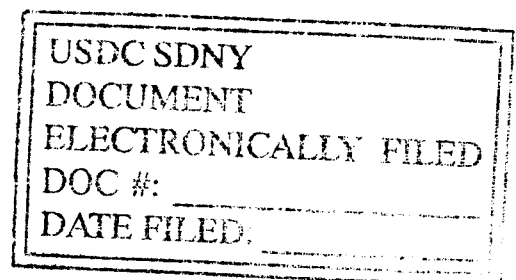
This Order adopts in full the Report and Recommendation submitted by Magistrate Judge George A. Yanthis. For the reasons stated in that Report, which was prepared at the conclusion of an inquest hearing in which Plaintiffs presented evidence on damages,<sup>1</sup> this Court awards Plaintiffs \$92,000.00 in past lost earnings, \$768,960.00 in future lost earnings, \$500,000.00 in past pain and suffering, and \$1,200,000.00 in future pain and suffering.

**I. Background**

Plaintiffs Timothy Hinckley and June Hinckley ("Plaintiffs") commenced this personal injury action seeking to recover damages for injuries that Timothy Hinckley ("Timothy") sustained when he was thrown approximately eight feet to the ground from the back of a garbage truck upon which he was riding. Timothy sustained a variety of serious and ongoing injuries that are described in full in Judge Yanthis's thorough Report.

---

<sup>1</sup> Defendant Westchester Rubbish did not appear at that hearing.



This Court entered a partial default judgment against Defendant Westchester Rubbish, Inc., on December 19, 2005, and referred this matter to Judge Yanthis for a Report and Recommendation as to the amount of damages Westchester Rubbish, Inc., would be required to award to Plaintiffs. Judge Yanthis held an inquest hearing on June 1, 2006, and submitted his Report to this Court on July 12, 2006. Neither party has objected to the Report and Recommendation.

## **II. Judge Yanthis's Report and Recommendation**

### **a. Standard of Review**

In reviewing a Report and Recommendation, a Court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). To accept a Report and Recommendation to which neither party has timely objected, “a district court need only satisfy itself that there is no clear error on the face of the record.” *Nelson v. Smith*, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985) (citations omitted). *See also Pizarro v. Bartlett*, 776 F. Supp. 815, 817 (S.D.N.Y. 1991) (court may accept report if it is “not facially erroneous”).

### **b. Judge Yanthis did Not Clearly Err in Setting Damages**

Judge Yanthis did not err in determining the appropriate amount of damages to award Plaintiffs in this case. His thorough and thoughtful Report sets forth the circumstances of Timothy's accident and his various ongoing health issues; the past earnings Timothy lost as a

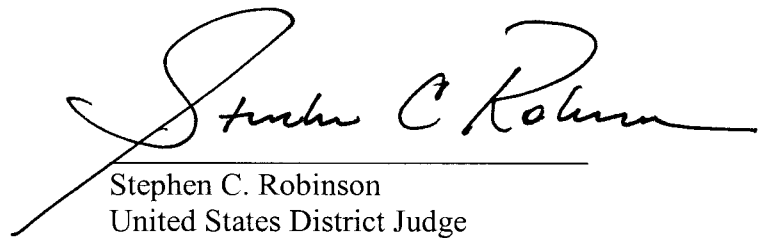
result of the accident; the wages that he would lose if he never worked again, which were reduced by 10% because he testified that he could not *presently* work; and an overview of cases that awarded pain and suffering damages to other plaintiffs who sustained injuries and ongoing health issues similar to Timothy's, as well as an appropriate award for Plaintiffs' past and future pain and suffering. This Court thus accepts the Report in full, and awards Plaintiffs \$92,000.00 in past lost earnings, \$768,960.00 in future lost earnings, \$500,000.00 in past pain and suffering, and \$1,200,000.00 in future pain and suffering.

The Clerk of the Court is directed to close this case.

IT IS SO ORDERED

White Plains, New York

Dated: October 2, 2006



Stephen C. Robinson  
United States District Judge